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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

IRMA BRITO,

Defendant and Appellant.

G051800

(Super. Ct. No. 12HF1422)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheri T. Pham, Judge. Affirmed.

Richard Schwartzberg, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Teresa Torreblanca, and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Irma Brito guilty of possessing heroin for sale (Health & Saf. Code, § 11351; count 1) and possession of methamphetamine (Health & Saf. Code, § 11377; count 2). The trial court suspended imposition of sentence and placed Brito on probation for three years.

Brito challenges the sufficiency of the evidence she possessed heroin for sale, and she argues the court improperly ordered her to pay the costs of probation as a condition of probation. We reject both arguments and affirm the judgment.

FACTS

Prosecution

One day in March 2012, Newport Beach Police Detective Jeff Perkins was in a Target parking lot watching Edward “Eddie” Loera, a known drug dealer. At the time, Loera was sitting in his parked truck with Brito. Perkins saw a man approach the driver’s window of Loera’s truck. The man exchanged something with Loera and walked away. Within minutes, a second man approached the truck and hopped inside. The man sat in the backseat while Loera drove around the parking lot and Brito sat in the passenger seat. When Loera stopped his truck, the man got out and walked away.

A few days later, police arrested Loera and found individually wrapped, one-gram packages of heroin in his truck. Perkins obtained a search warrant for Loera’s apartment. When he knocked on Loera’s apartment door to execute the warrant, Brito answered dressed in her pajamas.

On the coffee table in the living room, Perkins found two baggies of methamphetamine with a combined weight of approximately .74 of a gram, a used syringe, two used methamphetamine pipes, a syringe loaded with approximately 50 cubic centimeters (cc’s) of heroin, cotton swabs, a metal spoon with heroin residue, a short straw, and pay-owe sheets.

In a wooden box on top of the coffee table, Perkins found 8.05 grams of powdered black tar heroin, five syringes, a metal sifter, used methamphetamine pipes, a digital scale, and a rope, which he said could be used as a tourniquet.

In a purse near the coffee table, Perkins found Brito's driver's license and \$420 in cash. There was another \$400 in cash underneath her purse. Another purse was found in the bedroom that contained \$85 in cash and some used syringes. Items of male and female clothing were found in the chest of drawers, and the bedroom closet contained an unlocked safe.

Inside the safe, Perkins found Loera's driver's license, \$6,312 in cash, a plastic bag containing 1.2 grams of methamphetamine, four plastic bindles containing .1 grams of methamphetamine each, a methamphetamine pipe, a bag of used syringes, two digital scales with black tar heroin residue, a digital scale calibrator, and a pill bottle containing Seroquel, OxyContin, and hydrocodone pills.

After her arrest, Brito told Perkins she knew about Loera's drug business. She admitted running drugs for him "in the beginning," and occasionally accompanying Loera on his drug sales. She said, "I do sometimes drive him because . . . that's what he does, and if I'm not working, I don't want to sit there all day."

Brito said she had been living in the apartment with Loera for about eight months, and her name was on the lease. She asserted "the stuff in the safe" belonged to Loera and "pretty much everything that was out there like in the purse . . . was [hers]." Brito admitted using two to three grams of heroin a day, but she denied ever selling it.

On Brito's cell phone, Perkins found a series of texts dating from November 2011 through March 2012. In early November 2011, Brito's ex-boyfriend, Nick Wilder, texted, "I'm sick and I need to buy a gram. That's all I want." Brito responded, "go to Bristol and Warner to the 99 cent store." A short time later she texted, "Are you going or no? Are you going?"

A few days later, Wilder texted, “Whatever. My homies want to know if we should park on the street or in one of these parking spaces to come up?” And, a few days later, Wilder texted, “I’m sick and need a little. Text me back now.”

In February 2012, Wilder sent the following message to Brito: “Yo, I need a quarter. Give me a price. And I need this ASAP. I got to handle some shit. It’s strictly business. But I’m coming to your door if I don’t hear back in five minutes. How much.” Later the same day, he texted, “We’ll be by within the next hour. Number 303, right? Have a Q weighed out and ready.”

Also in February, Loera texted Brito, “I’m finishing up. Going to be heading out right now. Can you make out two six packs, please. Thanks. See you in a few.”

In March, Brito texted Loera, “That was scary. As I pulled out of my parking spot I saw a cop standing outside of Ross entrance. Eek.” Loera replied, “Oh, shit. Be very careful. Love you.” Shortly thereafter, Brito texted Loera, “Has anybody called? Almost done.” Loera responded that “Kelsey” needed a half. Brito texted Loera, “Can you tell her to walk towards the Cuban restaurant where we are. I’m at the tables.”

In March, Brito texted Kory Chandra, and asked, “Are you using . . . ?” Three days later, she asked Chandra, “Do you need black?” Days later, Brito sent a text to an unidentified person and asked, “Have you been doing any B.” Around the same time, Wilder texted Brito, “Yo, I need black. Hasn’t this gone on long enough. I have a girl. I’m over you so let me talk to Eddie.”

According to Perkins, the prosecution’s drug expert, “B,” or “black,” is a street term for black tar heroin. Perkins said “Q” refers to a quarter piece of heroin. He said “two six packs” means two, six-gram orders of heroin, and a “half” is a half-gram of heroin. Perkins also said the cash he found in and around Brito’s purse was consistent with drug sales. When asked about his parking lot surveillance, Perkins opined Loera had been engaged in hand-to-hand drug sales. Based on his surveillance of Loera and

Brito, her cohabitation with him, the quantity of narcotics and cash found in the apartment, and the nature of Brito's text messages, Perkins opined Brito possessed heroin for sales.

Defense

Loera testified Brito had been living with him for about eight months before their arrest. He admitted selling heroin to support their personal drug habits, and he supplied Brito with two to three grams of heroin per day, which has a street value of about \$300. On the other hand, Loera said Brito did not sell drugs. When he called Brito and asked her to make individual packets of drugs, it was for their personal use, not for sale.

Brito also testified at trial. She denied selling drugs for Loera, or acting as his drug runner, and she denied telling Perkins otherwise. Brito said \$300 of the money found in her purse was from babysitting.

DISCUSSION

1. Sufficiency of the Evidence

Brito challenges the sufficiency of the evidence to prove she possessed heroin for sale. When considering such claims, an appellate court does not disturb the trier of fact's credibility determinations or the truth or falsity of the facts on which that determination depends. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Instead, we review the entire record in the light most favorable to the verdict and determine whether it contains solid, credible evidence such that a reasonable juror could find the defendant guilty beyond a reasonable doubt. (*People v. Davis* (1995) 10 Cal.4th 463, 509.) In doing so, we are mindful that circumstantial evidence may be sufficient to prove the defendant's guilt beyond a reasonable doubt. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) We may reverse for lack of substantial evidence only if “upon no hypothesis whatever is there sufficient substantial evidence to support” the conviction. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Relying primarily on *In re Christopher B.* (1990) 219 Cal.App.3d 455, 466, Brito asserts possession for sale of heroin requires proof she personally possessed heroin with the specific intent to sell it. We disagree.

First, to prove possession of a drug for the purpose of sales, the prosecution need only prove the defendant either possessed the controlled substance with the specific intent to sell it, *or* possessed the drug with the specific intent that someone else will sell it. (*People v. Parra* (1999) 70 Cal.App.4th 222, 227; *People v. Consuegra* (1994) 26 Cal.App.4th 1726, 1732, fn. 4.) Brito knew Loera sold heroin, and they lived in the same apartment. So that point is not well taken. (See *People v. Morante* (1999) 20 Cal.4th 403, 417 [either actual or constructive possession of the controlled substance supports criminal liability for possession for sale].)

Moreover, while we believe the evidence demonstrates Brito's direct participation in heroin sales, the prosecution also pursued the theory Brito aided and abetted Loera. (Pen. Code, § 31.) To prove aiding and abetting, the prosecution must establish the defendant acted with knowledge of the unlawful purpose of the principal and the intent to encourage or facilitate the principal's commission of the crime, and the defendant's act actually aids, promotes, encourages or instigates the commission of the crime. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561.) The prosecution need not prove the aider and abettor formed the specific intent that is an element of the underlying offense by the perpetrator. (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1123.)

Here, the prosecution proved Brito cohabitated with Loera, and she knew he was a drug dealer. Her purses contained over \$800 in cash, but Brito could only account for \$300 of this amount through legitimate means. One purse was found in close proximity to a wooden box that contained over eight grams of heroin and a digital scale. Moreover, in her statement, Brito admitted helping Loera deal drugs when she was not working. The texts on her phone support her admission by demonstrating her willingness to serve as a heroin conduit between Loera, and her friends and ex-boyfriend.

In our view, Brito's actions with Loera, her knowledge of his drug dealing and willing assistance as evidence by the text messages, her ready access to large amounts of cash and heroin, together with Perkin's expert testimony, provides ample circumstantial evidence Brito knowingly aided and abetted Loera in the possession of heroin for sale. (See *People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746.) Consequently, substantial evidence supports the verdict.

2. Probation Condition

At sentencing, the court placed Brito on probation for three years under various terms and conditions. After stating the terms of probation, the court said, "And you are to pay the cost of probation according to your ability to pay as directed by your probation officer."

Brito argues the court erroneously ordered her to pay the costs of probation as a *condition* of her probation. The Attorney General does not object to clarifying any ambiguity. But there is no ambiguity. Defendants granted probation may be ordered to pay the reasonable costs of probation, so long as the payment of such collateral costs cannot be made a condition of probation. (Pen. Code, § 1203.1, subd. (b); *People v. Hall* (2002) 103 Cal.App.4th 889, 892; *Brown v. Superior Court* (2002) 101 Cal.App.4th 313, 321.)

Here, the court ordered Brito to cooperate with the probation department in making the determination of her ability to pay the costs of probation. The court did not condition probation on her payment of those costs, regardless of her ability to pay. Thus, there was no error.

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.